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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,731

06/06/2006

Byron P. Day

18169.2

4939

23556 7590 12/02/2008
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EXAMINER

TOLIN, MICHAEL A

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

12/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,731	Applicant(s) DAY ET AL.	
	Examiner MICHAEL A. TOLIN	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6-11-08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morman'992 (US 5226992) in view of Cree (US 2003/0022582) and Hovis (US 4842794).

The claims are rejected here for the reasons provided in numbered paragraph 3 of the previous office action, mailed 21 May 2008.

As to the new limitation of exposing the film to hot air, Hovis clearly teaches treatment with hot air under tension to form a pattern of open spaces (column 4, lines 41-52).

3. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patchell (US 3441638) in view of Schmidt (US 4248822) and Hovis.

The claims are rejected here for the reasons provided in numbered paragraph 4 of the previous office action, mailed 21 May 2008.

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4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patchell in view of Schmidt and Hovis as applied to claims 7 and 13 above, and further in view of Blais (US 3985600).

The claims are rejected here for the reasons provided in numbered paragraph 5 of the previous office action, mailed 21 May 2008.

5. Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morman'992 in view of Cree, and further in view of Patchell and Schmidt, and optionally further in view of Hovis.

The claims are rejected here for the reasons provided in numbered paragraph 6 of the previous office action, mailed 21 May 2008.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morman'662 (US 5116662) in view of Cree and Hovis.

The claims are rejected here for the reasons provided in numbered paragraph 7 of the previous office action, mailed 21 May 2008.

Response to Arguments

7. Applicant's arguments filed 21 August 2008 have been fully considered but they are not persuasive.

Applicant's main argument is that the claims are distinguished from the prior art in that the exposing step creates the pattern of open spaces. In contrast, Applicant argues that Hovis provides open spaces by embossing and Patchell provides open spaces by stretching. In response, this argument is not commensurate in scope with the claims. The claims do not preclude the formation of open spaces prior to the exposing step. The claims only require that the exposing step causes material to flow from thin areas to create a pattern of open spaces. There is no indication in the claims of an absence of open spaces prior to the exposing step. Moreover, even modification of the shape of initial open spaces is considered to satisfy the claimed limitation of "creating a pattern of open spaces". It is clear from Hovis that, despite the formation of small openings shown in Figure 4, subsequent heating causes material to flow from thin areas in Figure 4 to thicker areas as shown in Figures 5-7 (see also column 4, lines 20-52). Similarly, Patchell indicates that the openings contain bands interconnecting portions of the material across the openings (column 3, lines 1-5), such bands satisfying the claimed thin portions, and subsequent treatment with hot air melts this material and forms a pattern of openings (column 3, lines 2-12). Thus, while the examiner acknowledges that Hovis and Patchell provide openings prior to the heating step, the examiner's position is that such is not precluded by the claims for the reasons above.

Applicant argues Schmidt teaches away from the claimed invention in that Schmidt is directed to forming openings by heating the end surfaces of protrusions on a roller rather than by heating with hot air. However, Schmidt was not relied upon for heating with hot air. In each rejection, Hovis or Patchell was relied upon for this

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limitation. Schmidt was relied upon for providing evidence that it is well known to emboss between chilled rolls (see previous office action, page 4). Schmidt also provides a second teaching that cooling allows for molecular orientation in thinned portions of a film, which facilitates opening of the thinned portion by subsequent heat treatment. While the examiner acknowledges that Schmidt does not heat by hot air, as noted above Hovis and Patchell were relied upon for this limitation. Since Hovis and Patchell also create thinned portions by embossing with subsequent heat treatment, there would have been a reasonable expectation of success in achieving the above noted facilitation of opening in the processes of Hovis and Patchell as well. It is also noted that the examiner has not completely relied upon this second teaching in using Schmidt. The motivation from this second teaching was only optionally applied, as is clear from the statement of obviousness at the bottom of page 4 onto page 5 of the previous office action. One of ordinary skill in the art would have been motivated to perform the claimed step of chilling simply because it is well known to provide such chilling while embossing, as evidenced by Schmidt.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The new language added to claims 1 and 3 necessitated the new grounds of rejection.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL A. TOLIN whose telephone number is (571)272-8633. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael A Tolin/
Examiner, Art Unit 1791

/Richard Crispino/
Supervisory Patent Examiner, Art Unit 1791